

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-070 Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#) and [41.58.050](#). 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-071 Special provision -- State patrol personnel. In the case of mediation involving officers of the Washington state patrol appointed under [RCW 43.43.020](#), the mediator shall not consider (~~rates of pay or wage levels and~~) any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#) and [41.58.050](#). 99-14-060, § 391-55-071, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-055 (Order 88-08), § 391-55-071, filed 5/31/88.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-255 Interest arbitration -- Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed (~~pursuant to~~) under [WAC 391-55-210](#) (1) or (3), along with any costs for lists of arbitrators and for a (~~tape~~) recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairperson appointed (~~by the commission pursuant to~~) under [WAC 391-55-210](#)(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.56.450](#). 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-300 ~~((Educational employees ---))~~**Fact-finding.** If a dispute ~~((involving educational employees within the meaning of RCW 41.59.020(4) has not been settled after ten days of mediation))~~ has not been settled after bilateral negotiations and mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW, a period of ten days of mediation must have elapsed. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding shall be initiated if resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under that chapter or one hundred days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-310 ~~((Educational employees ---))~~**Selection of fact finder.** (1) Upon the submission of a timely request for fact-finding, the executive director shall ~~((invite the parties to exercise their right under RCW 41.59.120(5)).~~

~~—(a) The executive director shall))~~ furnish a list of members of the dispute resolution panel, and the parties shall meet within seven days following receipt of the list, to attempt to select a fact finder. Names shall be referred and any fact finder shall be selected under WAC 391-55-120.

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder ~~((under RCW 41.59.120(5)))~~, they shall notify the executive director.

(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder (~~((from))~~).

(a) For disputes under [chapter 41.59 RCW](#), the fact finder shall be a member of the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

(b) For disputes under [chapter 41.80 RCW](#), the fact finder may be a member of the commission staff or may be a member of the dispute resolution panel established in [WAC 391-55-120](#).

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-315 (~~((Educational employees---))~~)Conduct of fact-finding proceedings -- Waiver of objections. Proceedings shall be conducted as provided in [WAC 391-55-300](#) through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-320 (~~((Educational employees---))~~)Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties shall not be entitled to submit issues which were not among the issues mediated under [WAC 391-55-070](#).

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-325 (~~(Educational employees)~~)Fact-finding hearing. The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-330 (~~(Educational employees)~~)Order of proceedings and evidence. The order of presentation at the fact-finding hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-335 (~~(Educational employees)~~)Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

AMENDATORY SECTION(Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-340 (~~(Educational employees)~~)Closing of fact-finding hearings.

The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-55-345 ((Educational employees---))Findings of fact and recommendations. ((The)) Within thirty days after his or her appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder shall not be subject to appeal to the commission((, but the fact finder shall submit a copy of his or her written recommendations to the executive director)). Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties, and shall not rule on whether ((or not)) a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-55-350 ((Educational employees---))Responsibility of parties after fact-finding. The parties are entitled to consider the fact finder's recommendations privately, before they are made public.

(1) For cases under [chapter 41.59 RCW](#), within ((seven)) five days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(2) For cases under [chapter 41.80 RCW](#), within ten working days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ((request mediation pursuant to [chapter 41.58 RCW](#))) ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#) and [41.59.120](#). 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory

Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending Order 83-05, filed 12/1/83, effective 1/1/84)

WAC 391-55-355 ~~((Educational employees--))~~**Expenses of fact-finding.** Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and ~~((traveling))~~ expenses of a fact finder shall be paid as follows:

(1) A fact finder appointed by the commission from the commission staff under [WAC 391-55-310](#) (2)(a) shall be paid by the commission.

(2) A fact finder selected from the dispute resolution panel or some other source shall be paid by the parties, in equal shares.

[Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]